

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 303 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMABEN JAYANTIBHAI PATEL

Versus

AMRABHAI KALABHAI PATEL

Appearance:

MR PB MAJMUDAR for Petitioner
REFUSED for Respondent No. 1
MR GC RAY for Respondent No. 4
MR DK NAKRANI for Respondent No. 5

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 18/04/96

ORAL JUDGEMENT

1nnnnnnnnnn. This CRA is directed against the order passed below Exhs 20 & 22. Such applications were filed by the claimants for disbursement of compensation to them which was awarded by the consent award passed in Lok Adalat held on 16.4.95. It appears that in the motor accident that took place Jayantibhai Patel expired and

his widow-the present petitioner, his parents-present respondent Nos 1 & 2 filed MACP No.1772/92 before the MACT, Ahmedabad(Rural) at Mirzapur. Before the Lok Adalat matter was placed and by consent of the National Insurance Co.Ltd-respondent No.5 an award of Rs.1,45,350/- was made.

2. It is thereafter that respondent Nos 1 & 2, i.e. the parents of deceased made an application at Exh.22 to the effect tat the widow of the deceased has remarried as per the custom and that the deceased has left behind him her sister and that therefore amount should be distributed in four equal shares. The widow also filed an application at Exh.20 claiming that 70% of the amount should be paid over to her.

3. The MACT (Main) Ahmedabad(Rural) at Mirzapur by its impugned order, dated 9.2.96 decided the said two applications and rejected the contention of the parents that the petitioner-widow has remarried. The theory of remarriage is negatived on the ground that such case was not pleaded before the Lok Adalat and that it was not permissible for the tribunal at that stage to deny the claim of the widow which was accepted by the authorities at the time when the settlement was reached. The tribunal has, out of the amount of deposited, directed that the amount of Rs.70,000/- be paid to the petitioner-widow, Rs.45,000/- be paid to the mother of the deceased and Rs.30,350/- be paid to the father of the deceased.

4. The petitioner-widow of the deceased is aggrieved by this apportionment of her share. According to her the father of the deceased is not entitled to any share as he can not be said to be dependent of the deceased nor is he the heir and legal representative of deceased as he is not a Cl.I heir under Hindu Succession Act, 1956. It was therefore submitted that the award of amount of Rs.70,000/- only to the widow was bad in law and that same was required to be enhanced. In this connection attention of this court was invited to the reported decision of the Division Bench of this court in the case of UNION COOPERATIVE INSURANCE SOCIETY LTD vs BHARTIBEN , Wd/o HASMUKHLAL NARMADASHANKAR reported in 19 GLR 820. In the aforesaid case the Division Bench of this court was examining the question as to whether the father of the deceased son was entitled to claim any compensation when the widow of the deceased and his daughter were the claimants. By reference to Section 2 of Fatal Accidents Act, 1855 and Section 8 of Hindu Succession Act, 1956 it was held that any compensation on account of loss to the

estate which is awardable under section 2 of the Fatal Accidents Act, 1855 is in respect of the pecuniary loss to the estate of the deceased resulting from the accident. Damages for the loss caused to the estate are to be claimed on behalf of the estate and when recovered form part of the assets of the estate. The claim for such compensation could only be made by those who would succeed to the estate or on their behalf. Under section 8 of the Hindu Succession Act, 1956, the property of a male Hindu dying intestate devolves according to the provisions made in Chapter II and accordingly the property devolves firstly upon the heirs being the relatives specified in clause of the Schedule. When one turns to the Schedule, one finds that daughter and widow are amongst the heirs of Class I, whereas father is an heir of Class II. Under the Section 8, an heir belonging to Class II would succeed only if there are no heirs in Class I. Therefore, the father of the deceased could not have laid any claim to the estate of the deceased so long as his widow and daughter are there. Therefore, in any compensation awarded by the Tribunal on account of the loss to the estate of the deceased, the father could not possibly have laid any claim and no amount out of such compensation, even if awardable, could have been directed to be paid over to him.

5. In view of the aforesaid binding precedent of this court, the father of the deceased was not entitled to claim any amount from the loss to estate caused to the estate of the deceased. However, it shall have to be noted that under section 8 the mother of the deceased would fall within CL.I heir, and she would be entitled to equal share as that of the widow of the deceased or son and daughter of the deceased. In the award which is passed by the Conciliators at the Lok Adalat the claim of the father and the mother is also granted. That award has become final. The tribunal has, therefore, while apportioning the amount considered the claim of the father also. In my opinion, such claim is required to be considered because it is granted by the award of the Lok Adalat. In fact, the father has no claim, whatsoever. In that view of the matter, the widow of the deceased shall be entitled to some of the amount out of the awarded amount to her by the tribunal. The disbursal of amount awarded by the tribunal therefore shall have to be modified as under:

"Out of amount of Rs.1,45,350/-,
Rs.80,000/- to be paid to the applicant
No.1--Umaben, widow of Jayantibhai,
Rs.45,000/- to be paid to the

applicant--the mother of the deceased and
Rs.20,350/- to be paid to the applicant
No.2--father of the deceased."

Rest of the order of the the tribunal,
dated 9.2.96 is maintained.

6. In the result, CRA partially succeeds to the
aforesaid extent only. Rule is made absolute accordingly.
No costs.

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